



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

100 Cambridge Street
Suite 200
Boston, Massachusetts 02114

(617) 727-3100
(617) 727-6234 FAX

Docket No. X309375

O'REILLY AUTO ENTERPRISES LLC
Appellant.

**BOARD OF ASSESSORS OF
THE CITY OF LOWELL**
Appellee.

DECISION WITH FINDINGS

The appellee's Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction.

The appellant timely filed its abatement application with the assessors on February 3, 2020, which the assessors denied on February 11, 2020. Accordingly, the appellant had three months, or until Monday, May 11, 2020, to file its appeal with the Board under G.L. c. 59, §§ 64 and 65. However, his appeal was mailed to the Board in an envelope postmarked August 31, 2020, which the Board received on September 8, 2020; both dates are beyond the three-month statutory deadline.

The Board has only that jurisdiction conferred on it by statute. ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 732 (1982). "Since the remedy of abatement is created by statute, the board lacks jurisdiction over the subject matter of proceedings that are commenced at a later time or prosecuted in a different manner from that prescribed by statute." ***Nature Church v. Assessors of Belchertown***, 384 Mass. 811, 812 (1981) (citing ***Suffolk Law School***, 295 Mass. at 495 (1936)). Adherence to the statutory prerequisites is essential "to prosecution of appeal from refusals to abate taxes." ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 747 (1975). ***Old Colony R. Co. v. Assessors of Quincy***, 305 Mass. 509, 511-12 (1940).

Like the assessors, the Board also cannot waive jurisdictional requirements. ***Id.*** Accordingly, the time limit provided for filing the petition is jurisdictional and a failure to comply with it must result in dismissal of the appeal. ***Doherty v. Assessors of Northborough***, Mass. ATB Findings of Fact and Reports 1990-372, 373 (citing ***Cheney v. Inhabitants of Dover***, 205 Mass. 501 (1910); ***Assessors of Boston v. Suffolk Law School***, 295 Mass. 489 (1936)); see also ***Berkshire Gas Co. v. Assessors of Williamstown***, 361 Mass. 873 (1972).

The appellant's failure to file its appeal within 3 months of the February 11, 2020 denial of its abatement application deprives the Board of jurisdiction over this appeal. Accordingly, the appeal is dismissed for lack of jurisdiction and the decision is for the appellee.

This is a single-member Decision promulgated in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

APPELLATE TAX BOARD

By: */s/ Mark J. DeFrancisco*
Mark J. DeFrancisco, Commissioner

Attest: */s/ William J. Doherty*
Clerk of the Board

Date: March 3, 2021

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.